

STATE OF MICHIGAN
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
EMPLOYMENT RELATIONS COMMISSION

APPROVED MINUTES
REGULAR MEETING OF MAY 14, 2013
LANSING, MICHIGAN

The meeting of the Employment Relations Commission was called to order at 10:00 a.m., by the Commission Chair, Edward D. Callaghan, at MERC's Lansing Office, 1375 S. Washington, Suite 200, Lansing, Michigan.

Those in attendance: Edward D. Callaghan, Commission Chair; Commissioner Nino E. Green and Commissioner Robert S. LaBrant; Ruthanne Okun, Bureau Director; Lynn Morison, Staff Attorney; James Spalding, Mediation Supervisor; Micki Czerniak, Mediator; John Valenti, Administrative Law Specialist; Sidney McBride, Departmental Specialist; Verna Miller, Departmental Specialist; Travis Calderwood, Administrative Law Specialist; Carl Wexel, Law Clerk and Nancy Pitt, Executive Secretary.

Public in Attendance: Howard Shifman, Attorney, representing Allen Park EM; Mark Young, Rodney Sizemore, & John F. Kennedy, DPLSA; Daniel McNamara, DFFA; M. Misbah Shahid & John Willems, Miller Canfield; Cassandra Brown, Allen Park IAFF #1410; Frank Guido, POAM General Counsel; Mary Ellen Gurewitz, DPCOA; Jeffery Pegg, DFFA; Richard Mack, DPLSA.

It was moved by Commissioner LaBrant and seconded by Commissioner Green to adopt the agenda of the regular MERC meeting of May 14, 2013 as proposed. A vote was called on the motion. Edward D. Callaghan, Aye; Nino E. Green, Aye; Robert S. LaBrant, Aye. The motion passed.

MINUTES

It was moved by Commissioner LaBrant and seconded by Commissioner Green to adopt the minutes of the regular MERC meeting of April 9, 2013 as proposed. A vote was called on the motion. Edward D. Callaghan, Aye; Nino E. Green, Aye; Robert S. LaBrant, Aye. The motion passed.

DIRECTOR'S REPORT

The Act 312 and Fact Finding Reports were reviewed and discussed. Updates were provided by the Director. A total of 32 Act 312 cases and 41 fact finding cases were listed on the reports.

The Administrative Law Judge Reports were reviewed and discussed. Updates were provided by the Director. The Director will inquire with the ALJ concerning City of Keego Harbor and Pontiac Schools cases.

The Event Report was reviewed and discussed.

The Representation and Election Reports were reviewed and discussed.

The Representation Case Activity Report was reviewed and discussed.

The Elections Report was reviewed and discussed.

The Mediation Division Report was reviewed and discussed. The Director and Mediation Supervisor Jim Spalding are working on modifying the monthly report to include more detailed information on closed cases; delete cases assigned and never activated; capture staff meetings under administrative activities; and implement other changes that will make the report more meaningful. The revised report will be placed on the agenda for review at a regular meeting in the near future.

Joy Ryan, Media Administrative Assistant, has asked that the Hot Issues report be modified to the bullet format rather than the narrative format. Commission Chair Callaghan requested that both versions be provided to the Commission for review.

There were no work stoppages to report.

The Appellate Report was reviewed.

ADMINISTRATIVE AGENDA

City of Detroit's Emergency Motion to Dismiss Due to Lack of Arbitral Jurisdiction

- a. City of Detroit and POAM, Case No. D09 F-0703
- b. City of Detroit and DPCOA, Case No. D11 J-1169
- c. City of Detroit and DPLSA, Case No. D13 A-0005

The Commission heard oral argument in this matter. Arguing on behalf of Employer/Respondent City of Detroit, John H. Willems. Arguing on behalf of Petitioner/Unions, Frank A. Guido, POAM (EMT Unit); Mary Ellen Gurewitz, DPCOA; Richard G. Mack, DPLSA. See transcript of the oral argument attached. The Commission will issue its decision at the June 4 Special Meeting.

The Commission revisited and reconsidered the City's request that the Commission cease processing mediation and Act 312 proceedings in some of its bargaining units pursuant to the City of Detroit's receivership status under Section 27(3) of PA 436. Commissioner Green reiterated that the Commission has no adjudication function in Act 312 proceedings and submits that the matter should be challenged in the courts and not

by MERC. He further stated that MERC is being asked to refrain from what the statute requires and he is not comfortable supporting the motion. Commissioner Green moved to deny the motion. The Commission did not act on Commissioner Green's motion.

Commissioner LaBrant stated that he was not prepared to support the motion at this time for he needs more time to review and reconsider the matter. The Commission Chair stated that he would request that the arbitrator suspend action on the cases and not hold any further hearings until the matter is reviewed.

Commissioner LaBrant moved to call a Special Meeting on June 4, 2013 in the Commission's office at 3026 W. Grand Blvd., Ste. 2-750, Detroit, Michigan at 10:00 a.m., to resolve the matter and for various arbitration panels to suspend further activity until a decision is reached. A vote was called. Edward D. Callaghan, Aye; Nino E. Green, Naye; Robert S. LaBrant, Aye. The motion passed.

Motion of DFFA for leave to file Amicus Curiae Brief

Commissioner LaBrant moved and Commissioner Green seconded to grant the DFFA's Motion for Leave to File an Amicus Curiae Brief in Response to the City's "Emergency Motion for Determination of Arbitral Jurisdiction and Dismissal of Act 312 Petitions and Motion for Stay Pending Ruling". A vote was called. Edward D. Callaghan, Aye; Nino E. Green, Aye; Robert S. LaBrant, Aye; The motion passed.

The Commission reviewed and discussed the complaints against the arbitrator in the Plymouth Township Act 312 case and determined that there was no basis for taking action to remove the arbitrator from the panel. The Commission concluded that there was not any showing that the award issued was not in conformance with the law. They further noted that the award had not been tested in court pursuant to statute and that MERC is not the agency that performs that test.

Administrative Law Specialist John Valenti was welcomed by the Commission.

Verna Miller provided an update on PA 53 of 2011, Posting of Audits. She reported that 740 audits have been successfully uploaded. The audits can be viewed by year, name of unit or registration number. Kudos was extended to Verna Miller, Sidney McBride and Denise Hinneburg for their efforts.

There were post observations of the Act 312 Arbitrators, Fact Finders and Constituents Conference. The review of responses from participants was suggested by Commission Chair Callaghan to allow improvement upon future conferences. There were 107 in attendance for Thursday's session and 84 in attendance for Friday's session. The Commission Chair extended congratulations to the staff for their efforts in making the conference a success. He stated that the conference was well attended and added that we should take advantage of technology, power point, etc., for future conferences.

Significant/critical cases – Updates were reported by the Director on the DWSD cases and on other critical cases. A tentative settlement was reached by the parties in the Ferris State University case.

It was confirmed that a Special Commission meeting is scheduled for June 4, 2013 in the Commission's office at 3026 W. Grand Boulevard, Suite 2-750, Detroit, Michigan at 10:00 a.m.

It was confirmed that the next regular Commission meeting is tentatively scheduled for Tuesday, June 11, 2013 at 10:00 a.m., in the Commission's office at 3026 W. Grand Boulevard, Suite 2-750, Detroit, Michigan.

DECISIONAL AGENDA

The Commission decided the following matter:

1. ***Reese Public School District -and- Reese Professional Support Personnel Association***, Case No. C11 I-155. Commissioner LaBrant moved and Commissioner Green seconded to adopt the Decision and Order as presented. A vote was called. Edward D. Callaghan, Aye; Nino E. Green, Aye; Robert S. LaBrant, Aye. The motion passed.

NEW BUSINESS

The April 2013 Dashboard Project was reviewed. The staff was recognized for their efforts.

OLD BUSINESS

The Commission reviewed David Kempner application to MERC's panel of arbitrators and fact finders. It was unclear to the Commission whether Mr. Kempner possessed the experience required to be placed on its panel of 312 arbitrators and fact finders. Commissioner Green moved and Commissioner LaBrant seconded to appoint Mr. Kempner to the Grievance Arbitration panel. The Commission determined that Mr. Kempner could be placed on its panel of 312 arbitrators and fact finders after successfully completing MERC's Shadowing Program. A vote was called. Edward D. Callaghan, Aye; Nino E. Green, Aye; Robert S. LaBrant, Aye. The motion passed.

There was an update provided by the Director on the Bureau staff members who have offered to assist with modifying an article in the MPELRA Manual. A final list of authors will be provided at the next Commission meeting.

PUBLIC COMMENT

There was no public comment.

PENDING LITIGATION (closed session)

The Commission called for a closed session at 10:45 a.m., to discuss pending litigation in ***Bailey, et al v Callaghan, et al***, Case No. 12-cv-11503; ***Alex Gould-Werth, et al***, Case No. 12-cv-11700; ***Michigan State AFL-CIO, et al v Callaghan, et al***, Case No. 13-cv-10557; ***UAW, et al v Nino Green, et al***, Case No. 314781.

The Commission returned to Open Session at 10:57 a.m.

ADJOURNMENT

There being no further business before the Commission at this time, it was moved by Commission Chair Callaghan and seconded by Commissioner LaBrant that the meeting be adjourned at 12:08 a.m. A vote was called on the motion. Edward D. Callaghan, Aye; Nino E. Green, Aye; Robert S. LaBrant, Aye. The motion passed.